Calendar No. 218

101ST CONGRESS *1st Session*	SENATE	REPORT 101-118

RELEASE OF AIRPORT RESTRICTIONS AT NEWPORT NEWS, VA

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

H.R. 838

AUGUST 30, 1989.—Ordered to be printed
Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 838]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 838) to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission for airport purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 838, as reported, is to authorize the Secretary of Transportation to release restrictions on the use of certain airport properties conveyed to the Peninsula Airport Commission in Newport News, VA. The bill also authorizes the State of Hawaii to use certain funds generated at an off-airport duty-free facility for other transportation purposes in that State.

BACKGROUND AND NEEDS

PENINSULA AIRPORT COMMISSION

The Federal Aid to Airports Act of 1946 ceded federally-owned airports to civilian sponsors. The 1946 Act stipulated that the land must be used only for aeronautical purposes. The Act did not authorize the granting of releases from these restrictions in the deed of conveyance.

In 1986, Public Law 99-618 was enacted, authorizing limited release of deed restrictions on property originally conveyed to the Peninsula Airport Commission, which operates the Patrick Henry Airport in Newport News, VA. The Commission is now seeking releases on three additional parcels of land totalling 13 acres. Legislation is needed because this property has already been conveyed by the Commission to the City of Newport News, VA, and two private entities are under the impression that the land in question was not restricted. Attorneys for the Peninsula Airport Commission have stated that these parcels of land were not needed for airport purposes and that the proceeds from their sale were used for the development, improvement, operation, and maintenance of the airport.

H.R. 838 would amend Public Law 99-618 by allowing the limited release of deed restrictions on the 13 acres of real property in question, provided the Federal Aviation Administration determines that the use of the property involved will not affect the operation or development of the airport. The bill would also eliminate the current restriction limiting the conveyance of that property to the City of Newport News, VA.

HAWAII TRANSPORTATION FUND

In 1987, the State of Hawaii awarded a contract, through a competitive bidding process, for the operation of an off-airport duty-free facility. Based on revenue projections, the State has estimated that the combined operation of the on-airport and off-airport duty-free facilities will generate $1.15 billion over a five year period. Current law requires that these funds be deposited into the Airport Revenue Fund for operations and capital development at the Honolulu International Airport and other air transportation facilities in Hawaii. Given the funding needs for Hawaii's system of airports, the revenues derived from the off-airport duty-free facility are expected to create a substantial surplus in the State's Airport Revenue Fund.

In an effort to secure a portion of these funds for other transportation projects in the State, the Hawaii Legislature recently adopted legislation to require a diversion of such funds for highway construction, harbor development, and other transportation needs. However, on June 19, 1989, the Department of Transportation (DOT) concluded that such a proposal would place the State in violation of its Federal grant obligations under section 511(a)(12) of the Airport and Airway Improvement Act of 1982. Under the 1982 Act, funds generated at an airport must be used in a manner that directly and substantially relates to the air transportation of passengers or property. DOT has interpreted this requirement to mean that funds generated at the off-airport duty-free facility were essentially revenues "generated by the airport" and cannot be diverted for non-air transportation needs.

H.R. 838 would resolve this situation by permitting the use of certain revenues generated by the off-airport duty-free facility in Hawaii for any transportation purpose, including, but not limited to, airports, harbors, and highways. The non-airport transportation projects, for which these funds will be used, will enhance tourism

in Hawaii, which is the State's largest business. Given Hawaii's geography, this will ultimately benefit the airline industry which serves the State.

Legislative History

H.R. 838 was introduced by Representative Bateman on February 6, 1989. It is similar to legislation (S. 2247) passed by the Senate during the 100th Congress.

H.R. 838 was amended and reported by the House Committee on Public Works and Transportation, and passed by the House by voice vote on May 16, 1989. After referral to the Senate Committee on Commerce, Science, and Transportation, the bill was considered in open executive session on August 1, 1989. During consideration of the bill, Senator Inouye offered an amendment relating to the use of off-airport duty-free funds in the State of Hawaii. After agreeing to the amendment, the Committee, without objection, ordered the bill reported.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 3, 1989.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 838, an act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission for airport purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, August 1, 1989. We estimate that no cost to the federal government or to state or local governments would result from enactment of this legislation.

In 1947, the United States conveyed certain property in Newport News and York County, Virginia to the Peninsula Airport Commission for airport purposes. H.R. 838 would modify certain restrictions contained in Public Law 99–618 that limit the commission's ability to lease or convey portions of the property to others. In addition, the legislation would allow certain revenues from off-airport duty-free stores in Hawaii to be used by the state for any transportation purpose, and not just for air transportation purposes, through calendar year 1995.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld.

Sincerely,

Robert D. Reischauer,
Director.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee believes that the bill should not impose a significant regulatory, economic, or paperwork burden, nor should it adversely affect the personal privacy of any individual.

Section-by-Section Analysis

SECTION 1

This section amends subsection (b)(3) of the first section of Public Law 99–618, which authorized the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission in Newport News, VA, by substituting "20.5 acres" for "7.5 acres". This provision modifies the current law release of restrictions on the use of property at the Patrick Henry Airport to authorize the conveyance of 13 additional acres of real property. This section also repeals subsection (b)(4) of the first section of Public Law 99–618, which restricted the conveyance of property at the Airport to the City of Newport News, VA.

SECTION 2

Section 2 amends section 511(a)(12) of the Airport and Airway Improvement Act of 1982, which conditions the approval of an airport development project on airport sponsor assurances to the Secretary of Transportation that all revenues generated by the airport will be substantially related to the actual air transportation of passengers or property. The amendment to section 511(a)(12) provides an exception to this limitation for revenues generated from a contract between the State of Hawaii and a commercial licensee permitting the display and sale of in-bond merchandise at a location both on and off airport properties within that State. Such revenues may be expended for any transportation purpose, including, but not limited to airports, harbors, and highways of that State provided that: (i) they are limited to revenues attributable to sales of in-bond merchandise from other than airport properties; (ii) they must be in excess of 150 percent of the requirements of the airport revenue fund for a period of twelve months following the State's annual estimate of the airport's requirements; and (iii) the revenues shall not be available for transportation expenses other than those related to air transportation after December 31, 1995.

In recognition of the circumstances unique to the State of Hawaii, the Committee proposed to grant limited authority to the State to transfer, for a period of five years, funds generated from duty-free off-airport premises in excess of 150 percent of the annual expenditure requirements of the State's Airport Revenue Fund, which includes noise abatement projects and debt service. However, if the off-airport duty-free sales are below the 150 percent threshold, no funds may be transferred from the Airport Revenue Fund for any other transportation project.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF NOVEMBER 6, 1986

(Public Law 99-618)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding section 16 of the Federal Airport Act (as in effect on May 14, 1947), the Secretary of Transportation is authorized, subject to section 4 of the Act of October 1, 1949 (50 U.S.C. App. 1622c) and subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated May 14, 1947, under which the United States conveyed certain property in Newport News, and York County, Virginia, to the Peninsula Airport Commission for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions—

(1) The Peninsula Airport Commission shall agree that in leasing or conveying any interest in the property which the United States conveyed to such Commission by the deed described in subsection (a), the Commission will receive an amount for such interest which is equal to the fair lease value or the fair market value, as the case may be (as determined pursuant to regulations issued by the Secretary).

(2) Any amount so received by the Peninsula Airport Commission shall be used by the Commission for the development, improvement, operation, or maintenance of a public airport.

(3) Any release granted by the Secretary of Transportation under subsection (a) of this section may not apply to more than [7.5 acres] *20.5 acres* of real property.

[(4) The Peninsula Airport Commission may not lease or convey any interest in any of the property which the United States conveyed to such Commission by the deed described in subsection (a), to any person or business concern other than the City of Newport News, Virginia.]

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

Section 511 of that Act

SEC. 511. PROJECT SPONSORSHIP.

(a) SPONSORSHIP.—As a condition precedent to approval of an airport development project contained in a project grant application submitted under this title, the Secretary shall receive assurances, in writing, satisfactory to the Secretary, that—

(1) through (11) * * *

(12) all revenues generated by the airport, if it is a public airport, and any local taxes on aviation fuel (other than taxes in effect on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987) will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property; except that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in the governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all other revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply; *and except further that this limitation on the use of all other revenues generated by the airport shall not apply to revenues generated from a contract between the State of Hawaii and a commercial licensee permitting the display and sale of in-bond merchandise at a location both on and off airport properties within that State, and revenues so generated may be expended for any transportation purpose, including, but not limited to, airports, harbors, and highways of that State only if (A) the revenues which may be so used are limited to revenues attributable to sales of in-bond merchandise from other than airport properties; (B) the revenues which may be so used are in excess of 150 percent of the requirements of the airport revenue fund for a period of twelve months following the State's annual estimate of the airport's requirements; and (C) the revenues described in subparagraph (A) of this paragraph are not available for transportation expenses other than those related to air transportation after December 31, 1995;*

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